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APPELLANT PRO SE:

**SADAT A. WADE**  
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ATTORNEYS FOR APPELLEE:

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**IN THE  
COURT OF APPEALS OF INDIANA**

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SADAT A. WADE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A05-0610-CR-546
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

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APPEAL FROM THE LAKE SUPERIOR COURT  
The Honorable Natalie Bokota, Magistrate  
The Honorable Thomas P. Stefaniak, Jr., Judge  
Cause No. 45G04-0001-CF-13

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**September 5, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

In this pro se appeal, Appellant-Defendant, Sadat Wade, appeals the trial court's denial of his petition for a belated appeal. We affirm.

### FACTS

Our opinion in Wade's post-conviction appeal is instructive regarding the underlying facts and procedural history in this case. Following incidents occurring on January 26, 2000, Wade pled guilty on November 27, 2000, to one count of Class A felony robbery and one count of Class C felony battery. *Wade v. State*, No. 45A03-0503-PC-126, (Ind. Ct. App. Jan. 11, 2006). On November 27, 2000, pursuant to the fixed terms of the plea agreement, the court imposed concurrent sentences of fifty years for the robbery and eight years for the battery. *Id.* slip op. at 3. Wade sought post-conviction relief on August 5, 2002, which was ultimately denied on January 25, 2005. *Id.* slip op. at 4-5. In our opinion affirming the denial of post-conviction relief, our court disposed of Wade's challenge to the appropriateness of his sentence on the basis that, pursuant to *Collins v. State*, 817 N.E.2d 230 (Ind. 2004), he was barred from challenging his sentence imposed pursuant to a fixed plea agreement. *Wade*, slip op. at 7 n.2.

On February 27, March 28, and June 20, 2006, Wade filed motions before the trial court requesting permission to file a belated appeal. In these motions, Wade argued that he was "required to attack his sentence by direct appeal" pursuant to *Collins*. App. at 172. Wade further claimed in his petitions that he "was not informed of his right to attack his sentence by means of an Appeal." App. at 172, 199, 226. On March 2, 2006, the trial court denied Wade's motion, and each successive motion thereafter, on the grounds that pursuant to *Collins*, Wade's claims for relief from his conviction and

sentence could be pursued in successive petitions for post-conviction relief only. On August 8, 2006, Wade attempted to file a notice of appeal, which the trial court refused to file. Wade therefore filed a brief with this court. In an October 27, 2006 order, this court issued an order requiring Wade to show cause why his appeal should not be dismissed, citing the rule in *Collins* that sentences pursuant to open pleas may be challenged in belated appeals under Indiana Post-Conviction Rule 2(1), but that sentences pursuant to fixed pleas such as his, where the trial court did not exercise sentencing discretion, could not be challenged. 817 N.E.2d at 231. Following Wade's response, in a December 19, 2006 order, this court dismissed Wade's appeal with prejudice, finding Wade's challenges to his sentence were not permitted under *Collins* due to the fact of his fixed plea and further concluding the other issues raised were either waived or *res judicata*. Following Wade's motion to reconsider on the grounds that the trial court had erroneously informed him at the guilty plea hearing that he could not challenge his sentence on direct appeal, this court, in a March 5, 2007 order, granted Wade's motion and reinstated his appeal, limiting it to the issue of whether the trial court erred in denying his Motion for Petition to File Belated Appeal.

### **DISCUSSION AND DECISION**

Indiana Post-Conviction Rule 2(1) provides in relevant part:

Where an eligible defendant convicted after a trial or plea of guilty fails to file a timely notice of appeal, a petition for permission to file a belated notice of appeal for appeal of the conviction may be filed with the trial court, where:

(a) the failure to file a timely notice of appeal was not due to the fault of the defendant; and

(b) the defendant has been diligent in requesting permission to file a belated notice of appeal under this rule.

As a petitioner seeking the belated appeal, Wade bore the burden of proving his grounds by a preponderance of the evidence. *Salazar v. State*, 854 N.E.2d 1180, 1184 (Ind. Ct. App. 2006). Although our review of a trial court's decision denying a defendant permission to file a belated notice of appeal is generally for abuse of discretion, when the allegations contained in the motion provide the only basis in support of the motion, our review is de novo. *See Baysinger v. State*, 835 N.E.2d 223, 224 (Ind. Ct. App. 2005).

In considering whether the trial court erred in denying Wade permission to file a belated notice of appeal, we find it unnecessary to address the merits of his timeliness and diligence, because Wade, who was challenging his sentence, was not eligible for a belated appeal. The trial court denied Wade's motion on the basis that, pursuant to *Collins*, he was not eligible for a belated appeal. *Collins* provides that defendants who have pled guilty may appeal their sentences in direct or belated appeals only if the trial court exercised discretion in sentencing them. 817 N.E.2d at 231-33. In our preliminary orders we agreed with the trial court, finding belated appeals to sentences were available only to those defendants who had pled guilty to an open plea, not to a fixed-term plea as Wade did. We further observed that to the extent Wade was making additional claims, those claims were either waived or *res judicata*. The only grounds upon which this court appeared to question its dismissal of Wade's appeal arose out of his claim that the trial court erroneously told him that he could not challenge his sentence upon appeal. A

review of the sentencing statement indicates otherwise. Upon sentencing Wade, the court stated,

Mr. Wade, you have a right to appeal my decision, if you feel that I have made any errors in considering your case. If you are unable to afford a lawyer, sir, one will be appointed to you free of charge. . . . In the event that you decide you do want to file an appeal, you will need to notify the Court immediately and we will consider it at that time. You also have the right to file a Post Conviction Relief Petition, sir.

Sentencing Tr. at 12-13. The trial court then proceeded to explain to Wade what a post-conviction relief petition was. On the question, therefore, of whether the court “erroneously” informed Wade he had no right to appeal, we conclude his claim on this point is not supported by the record. We further note, however, that due to his plea agreement to a fixed plea, Wade was not entitled to challenge his sentence through a direct appeal or the belated appeal process of Post-Conviction Rule 2 because the trial court exercised no discretion in sentencing him. *See Collins*, 817 N.E.2d at 231-32. As Wade was not entitled to contest his sentencing claim in a direct or belated appeal, and having found no error in the trial court’s informing Wade regarding his right to appeal, we affirm the trial court’s denial of Wade’s petition.

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur